

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANA D. HOLMES and U.S. POSTAL SERVICE,
POST OFFICE, Davis, CA

*Docket No. 01-2093; Submitted on the Record;
Issued March 7, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On February 14, 1994 appellant, then a 38-year-old letter carrier, filed an occupational disease claim, alleging that numerous incidents of harassment occurred at the employing establishment. She stopped working on October 4, 1993. By letter dated April 4, 1994, the Office of Workers' Compensation Programs informed appellant of the type of evidence needed to support her claim. On July 18, 1994 she returned to work at a different postal establishment.

In support of her claim, appellant submitted numerous statements, supporting documentation and medical evidence. The employing establishment submitted records in controversion of appellant's claim.

By decision dated November 22, 1994, the Office denied the claim, finding that appellant failed to establish that she sustained an emotional condition in the performance of duty. On December 15, 1994 appellant, through counsel, requested a hearing and submitted additional evidence. At the hearing, held on August 11, 1997, appellant testified regarding her allegations. The employing establishment also submitted additional evidence.

In a decision dated August 5, 1998, an Office hearing representative affirmed the November 22, 1994 decision, finding that appellant failed to establish that she sustained an emotional condition in the performance of duty. On August 17, 1998 appellant, through counsel, requested reconsideration and submitted additional evidence. By decision dated August 1, 2001, the Office denied modification of its prior decision. The instant appeal follows.

The Board finds that appellant failed to establish that she sustained an emotional condition in the performance of duty.

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.¹ Workers' compensation law is not applicable to each and every injury or illness that is somehow related to employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.² On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁴ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Act. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁵ When an employee experiences emotional stress in carrying out his employment duties or has fear and anxiety regarding his ability to carry out his duties and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.⁶

Furthermore, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act.⁷ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. The issue is whether the claimant under the Act has submitted sufficient evidence to

¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² 5 U.S.C. §§ 8101-8193.

³ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ 28 ECAB 125 (1976).

⁵ See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁶ *Lillian Cutler*, *supra* note 3 at 130.

⁷ See *Michael Ewanichak*, 48 ECAB 354 (1997).

establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁸

In the instant case, the basis for appellant's allegations is that she was continually harassed by coworkers and management and provided a diary of incidents that allegedly occurred between November 1987 and January 1994. She specifically alleged that coworkers made derogatory comments about her, called her names, that she was intentionally bumped with a mail cart and that management urged her to work faster and showed favoritism in work hours and assignments and failed to correct the tense situation at the employing establishment.

Regarding appellant's contention that management showed favoritism in work hours and assignment, the Board has long held that the assignment of a work schedule or tour of duty is recognized as an administrative function of the employing establishment and, absent demonstrated error or abuse, does not constitute a compensable factor of employment.⁹ In the instant case, the employing establishment countered appellant's allegations and, while she submitted some supportive statements from coworkers, these were general in nature and did not rise to the level of error and abuse on the part of the employing establishment. Likewise, the employing establishment countered her contention that she was urged to work faster, stating that she was recognized as one of the fastest carriers and there was, therefore, no need to urge her to speed up.

Regarding the bumping incident, the employing establishment submitted evidence showing the crowded conditions that existed in the workplace and advised that bumps inadvertently happened on a frequent basis. Appellant submitted no corroborative evidence regarding this incident. The Board, therefore, finds that she failed to establish that it occurred in the performance of duty.

Regarding appellant's allegation that she was verbally harassed by management and coworkers, it is well established that verbal altercations or abuse in the workplace may constitute a compensable factor of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.¹⁰ The record in this case supports that appellant had a personal relationship with a married coworker, Jerry Wade, after which Mr. Wade returned to his wife. The record further indicates that Mr. Wade's stepdaughter also worked at the employing establishment. Much of the harassment perceived by appellant began at this time and she submitted statements that support the fact that there was some name-calling and derogatory comments made to her. The record, however, supports that the basis for the disagreements between appellant and her coworkers was imported to the employment from her private life and, therefore, did not arise out of the employment.¹¹ The Board thus finds that these incidents would not be compensable factors of employment. While the record indicates that appellant submitted a claim with the Equal Employment Opportunity Commission regarding

⁸ *Id.*

⁹ *Helen P. Allen*, 47 ECAB 141 (1995).

¹⁰ *See Mary A. Sisneros*, 46 ECAB 155 (1994).

¹¹ *See Debra Alvarez*, 53 ECAB ____ (Docket No. 01-637, issued October 4, 2001).

perceived treatment at the employing establishment, in a decision dated May 8, 2000, the U.S. District Court for the Eastern District of California found that the harassment was caused by events outside the workplace.¹²

The Board, therefore, finds that as appellant has not established a compensable employment factor, she has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty as alleged.¹³

The decision of the Office of Workers' Compensation Programs dated August 1, 2001 is hereby affirmed.

Dated, Washington, DC
March 7, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹² The Board notes that, while ruling in favor of the employing establishment, the court further found that the employing establishment did not do enough to stop the harassment. The Board has held, however, that findings of other federal agencies are not binding on the Office or the Board; *see Barbara Hughes*, 48 ECAB 398 (1997).

¹³ As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).